

Case and Comment.

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS.

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED.

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CASE AND COMMENT.

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Rufus W. Peckham.

The nomination of Judge Rufus W. Peckham, of the New York Court of Appeals, to be the successor of the late Justice Jackson in the Supreme Court of the United States, is very welcome to the country. So manifestly fitting is the appointment, that political opponents and friends alike of the President unite in commendation of the choice. For nine years he has very worthily borne the same name and the same judicial honors which were borne in the same court by his father, who, after distinguished service on the bench, while seeking renewed strength in travel, on November 22, 1873, went down in mid ocean, calmly encouraging his fellow passengers as the steamship *Ville du Havre* sank from the effects of a collision with the ship *Loch Erne*.

The home of Judge Peckham has always been in Albany, where he was born about fifty-eight years ago, and where he obtained his education, studied law, and then practiced his profession, until, in 1883, he was elected Judge of the Supreme Court, which position he held until his election in 1886 to the Court of Appeals. Among the important cases in which he was counsel are those of *People v. Weaver*, 100 U. S. 539, 25 L. ed. 705, and *Albany County v. Stanley*, 105 U. S. 305, 26 L. ed. 1044, relating to the taxation of state banks, which he argued before the Supreme Court of

the United States against Senator Edmunds. Early in his professional life, in 1869, he became district attorney of Albany county. He was always a prominent man in the councils and activities of the Democratic party until he became a judge. When he went upon the bench he demonstrated that he was one of those who are able to step from active and conspicuous service as a member of a political party into strictly nonpartisan judicial labor. In some of the most exciting political controversies of recent years respecting contested elections he has shown that mists of party feeling do not dim his clear judicial vision. From his action in the series of election contests that came before the Court of Appeals it would be difficult to guess his political affiliation. Thus, he wrote the opinion of the court in *People, ex rel. Daley, v. Rice*, 129 N. Y. 449, 14 L. R. A. 643, which granted a mandamus to the state board of canvassers in favor of a Republican candidate, while he dissented in *People, ex rel. Nichols, v. Board of County Canvassers*, 129 N. Y. 395, 14 L. R. A. 624, from a decision in favor of a Democratic candidate. The same independence is shown in other cases. His opinions as judge of the Court of Appeals are to be found through forty-two volumes of the New York Reports and touch many cases of great importance. A recent opinion on a novel and important constitutional question is that which he wrote in *Health Department of the City of New York v. Trinity Church*, 145 N. Y. 32, 27 L. R. A. 710, sustaining a statute requiring water to be furnished on each floor of every tenement house. It is certain that his clearness, vigor, and independence of mind will make him a valuable member of the court which he now enters.

To anticipate the wish of our subscribers, we have procured the portrait of Mr. Justice Peckham, and it accompanies this issue as a supplement.

Reciprocity as to Foreign Judgments.

The effect of a foreign judgment which is purely executory, when sued upon in this country, is examined, with an extensive marshaling of the decisions and laws of different countries, in an opinion by Mr. Justice Gray in *Hilton v. Guyot*, 159 U. S. 113. By a bare majority the Supreme Court of the United States holds that a judgment rendered in France against a citizen of this country is only *prima facie* evidence when sued upon here, and bases this decision on the ground that judgments of other countries are, by the laws of France, reviewable upon the merits when action is brought upon them in French courts. Reciprocity in respect to the effect of foreign judgments is declared to be a part of international jurisprudence.

But a judgment rendered in Canada against a citizen of this country is, in the companion case of *Ritchie v. McMullen*, given a different effect, and held to be conclusive in the absence of fraud or other special ground of attack, and not subject to re-examination on the merits, since, by the law of England, prevailing in Canada, a judgment rendered by an American court under like circumstances would be allowed full and conclusive effect.

There has been in the past much lack of harmony in American decisions on this subject, many of them holding that a foreign judgment was only *prima facie* evidence when set up as the basis of a cause of action, while the English decisions have been regarded by writers on this subject as entirely and conclusively committed to the doctrine that foreign judgments must be held conclusive of the merits. Freeman on Judgments, § 597, says, in respect to American decisions: "No prediction in regard to future decisions is more likely to be realized than that our courts in time will place foreign judgments on the same footing which they now occupy in the mother country." While Black on Judgments, § 829, says: "Perhaps it cannot yet be said that the status of foreign judgments is irrevocably settled in this country. But it is a safe prophecy that the doctrine which makes them conclusive on the merits will receive the support of almost every fresh decision in the coming years."

But the present decision in *Hilton v. Guyot*, which is radically different from that predicted, is rendered by the highest court in the United States after the most exhaustive discussion of the subject that can be found in the whole range of legal literature. The novelty of the

doctrine adopted and the confusion in the previous decisions on the subject make it especially to be regretted that the decision was rendered by a mere majority of the justices. But in this respect it is like many other notable decisions which have become the foundation of the law on different subjects.

While the question decided in this case is not one on which the decision of the Supreme Court of the United States must, in the absence of treaty provisions, necessarily be followed by state courts, the international character of the question makes it especially appropriate that the decision of this court should be the national doctrine on the subject. The decisions of state courts which have held foreign judgments conclusive, as in the case of *Dunstan v. Higgins*, 138 N. Y. 70, 20 L. R. A. 668, have been rendered without any consideration of this doctrine of reciprocity, and generally, we think, in passing upon judgments of English or Canadian courts, which would be conclusive even if the doctrine of reciprocity were adopted.

After an exceedingly interesting review of the law of other nations on the subject, Mr. Justice Gray, in writing the opinion of the court, makes a summary as follows:

"It appears, therefore, that there is hardly a civilized nation on either continent, which, by its general law, allows conclusive effect to an executory foreign judgment for the recovery of money. In France, and in a few smaller states—Norway, Portugal, Greece, Monaco, and Hayti—the merits of the controversy are reviewed as of course, allowing to the foreign judgment, at the most, no more effect than of being *prima facie* evidence of the justice of the claim. In the great majority of the countries on the continent of Europe—in Belgium, Holland, Denmark, Sweden, Germany, in many cantons of Switzerland, in Russia and Poland, in Roumania, in Austria and Hungary (perhaps in Italy), and in Spain—as well as in Egypt, in Mexico, and in a great part of South America, the judgment rendered in a foreign country is allowed the same effect only as the courts of that country allow to the judgments of the country in which the judgment in question is sought to be executed.

"The prediction of Mr. Justice Story (in § 618 of his *Commentaries on the Conflict of Laws*, already cited) has thus been fulfilled, and the rule of reciprocity has worked itself firmly into the structure of international jurisprudence."

Res Judicata as to Negligence.

An inquiry from a correspondent for decisions on the conclusiveness of an adjudication as to negligence, especially in states where the specific acts constituting the negligence must be alleged, has been received. The writer quotes one of the judges of the Circuit Court of the United States as saying that "the point as to what is *res judicata* in a case of negligence, particularly, has never been decided." Very little authority, indeed, can be found on this exact question, notwithstanding numerous cases in which the conclusiveness of a judgment in a negligence case has been in some way involved. These cases turn upon the effect of a judgment as to negligence when the parties are not exactly the same, or when an attempt has been made to split a cause of action by bringing different suits based on the same negligent transaction, or upon various questions other than the conclusiveness of the decision as an adjudication of the mere fact of negligence. The only decision that we remember to have seen that is directly in point, although we have not exhaustively examined the authorities, is that of the Supreme Court of Kentucky in *McCain v. Louisville & N. R. Co.*, 15 Ky. L. Rep. 80, 22 S. W. Rep. 325, which is marked, "not to be reported," and is therefore not found in the official Kentucky Reports. This fact indicates that the court regarded the case as clearly within well-settled principles of law, as it doubtless is. Nevertheless the application of the principle involved seems to be unusual. The decision was that a judgment in favor of a railroad company, when sued for negligence in failing to give the usual and customary notice of the approach of its train at a crossing, whereby plaintiff was decoyed so near the crossing that his horse became frightened and ran away, where the answer denied the specific charges of negligence, and also denied generally that by any negligence it had frightened the horse or caused injury to the plaintiff, was a bar to a subsequent action by the same person charging negligence of the company in giving an unusual and loud whistle which frightened his horse after it had passed the crossing. The court said: "The whole question of negligence, involving each and every act of the defendant, was in fact involved in the pleadings. But, if not, they should have been put in issue by proper averments and pleadings. There was but a single transaction,—a single cause

of action,—and there can be but one action." If there are other cases on the question asked by our correspondent we should be glad to learn of them.

Advertising Brigands.

"Any likeness of anything that is in Heaven above" we may expect to see in these days on city walls, slabsided rocks, or country barn doors, as the sign or trade-mark of some quack medicine or shoddy merchandise. If the "likeness" crammed into our vision by a persistent advertiser happens to be his own, we may as well resolve to "suffer and be strong." But when some immortal face that the nation loves is taken by a vulgar smart Aleck and degraded to an advertisement of eye salve, liver pills, or a cure for piles, we ought to be strong enough to make him do the suffering.

We may be compelled to look at some advertising portraits without any right to object. Even if a masculine omnipresence representing "Douglass shoes" gets tiresome to us when sprung upon our view from the magazines in our homes as well as from store windows, we need not complain. Shall a man not do what he will with his own—even his own portrait? Even the wrongful appropriation of a portrait may not always arouse us much. When we see the dead walls of buildings and the covers of cigar boxes blossom with a philosophic phiz advertising Herbert Spencer cigars, we may feel a vicarious humiliation. But perhaps Mr. Spencer may never know of this new proof of his greatness. If he does, we hope he will accept it with characteristic British humility.

But there are degrees of evil. It is no slight matter when the memory of our great Americans is dishonored. When "Garfield Tea" is shouted at us from ghastly caricatures of a murdered President, we may justly hope that the ghoulis advertiser may be drowned in his own concoction or swelled to bursting by compulsory imbibition thereof.

The feelings of relatives in such matters are entitled to consideration. The New York Court of Appeals in the recent case of *Schuyler v. Curtis*, 147 N. Y. 434, while denying to surviving relatives the right to an injunction against a public statue in honor of a deceased woman as a representative woman philanthropist, takes occasion to say: "It is perhaps needless, yet we will add that our decision furnishes, as we think, not the slightest

occasion for the belief that under it the feelings of relatives or friends may be outraged or the memory of a deceased person degraded with impunity by any person who may thus desire to affect the living." The injunction was denied in that case because the court held that the proposed statue was not inappropriate or designed for any purpose except to honor the deceased as a noble woman. But suppose a stranger had borrowed her name and portrait for the purpose of advertising a face powder, or suppose such honor should be paid to some living woman, Miss Susan B. Anthony for instance, or Miss Francis Willard. As Madam Recamier's face and form are made to adorn our street cars to illustrate the virtues of a complexion cream, there may be no living relatives to feel aggrieved, and the public may not be greatly disturbed. But suppose the name and portrait of Martha Washington or of Mrs. Cleveland was substituted. Or suppose an alleged picture of one of these ladies was used as a dummy to display perfect fitting corsets or seamless suits of underwear. While a rawhide whip would be an appropriate remedy it would probably not be used. Yet the supposed case is little, if any, worse than actual cases are. The children of President Arthur may properly object to the use of his name and face for the commercial profit of a cigar dealer. The surviving relatives of President Garfield may well exhaust legal remedies to stop the use of his name and face in advertising "Garfield Tea," unless the use is authorized by them, and this is inconceivable. But it is not a matter which concerns relatives alone. Even if no blood relative were living to object, must an outraged nation suffer it in case a wretched caricature of the sad, sublime face of Abraham Lincoln should be posted up everywhere to advertise "Bloater's Bitters," or "Smart Cuss's Corn Cure?"

We recommend to every state legislature the enactment of a statute to the following effect, to wit: "It shall be a crime for any person to post, print, publish, or in any way make use of any portrait, likeness, or caricature of any other person, living or dead, as an advertisement for any goods, wares, or articles of merchandise of any sort, without the written consent of the person whom such picture represents, if he is living, or of his next of kin if such person is dead."

For the penalty something less than death may do, but it should be severe enough to be effectual.

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Among the New Decisions.

Constitutional Law.

The constitutionality of a statute providing that no female shall be employed in any workshop or factory more than eight hours per day, or forty-eight hours per week, is denied in *Ritchie v. People*, 154 Ill. 98, 29 L. R. A. 79, on the ground that such a statute deprives persons of the privilege of contracting, which is both a privilege and a property right, without due process of law, and makes an arbitrary interference with private contracts which cannot be justified as an exercise of the police power.

The constitutional separation of the powers of government into departments, including the administrative within the executive department, is held in *French v. State*, *Harley (Ind.)* 29 L. R. A. 113, not to be violated by a statute creating a board for the election of prison directors, to be composed of the governor, the auditor, treasurer, secretary of state, and attorney general.

A statute restricting the right to discharge employees because of their membership in a labor union is held unconstitutional in *State v. Julow (Mo.)* 29 L. R. A. 257, as a special law and as a denial of rights without due process of law, since the constitutional right of an employer, including the right to discharge employees, is one of the essential attributes of property.

A statute providing for an attorney's fee in an action for wages is held in *Hocking Valley Coal Co. v. Rosser (Ohio)* 29 L. R. A. 386, to

be unconstitutional because of its discrimination between employers and other persons.

A statute which makes a person who drives a herd of animals over a highway on a hillside liable for all damages caused by destroying the banks or rolling rocks into or upon such highway is held, in *Brim v. Jones* (Utah) 29 L. R. A. 97, to be valid, and not to infringe constitutional provisions as to due process of law, equal protection, privileges, or immunities.

Municipal Corporations.

A collateral attack on proceedings to annex territory to a city was unsuccessful in *Kuhn v. Port Townsend* (Wash.) 29 L. R. A. 445, where it was made by an attempt to procure an injunction against municipal taxes on the territory annexed. The court said that an attack on the right of a municipal corporation over such territory could be made only in a direct proceeding by public officers.

The power of the mayor to adjourn the branches of the general council because they cannot agree on an adjournment is held in *Tillman v. Otter* (Ky.) 29 L. R. A. 110, to be limited to an adjournment of both councils together, and that he has no power to adjourn either of the two alone. It is also held that the majority of one branch of the council cannot, by refusing to consent to fix a time for an election of officers, and by remaining away from the meeting, prevent such an election when a majority of both branches take part in it.

An ordinance purporting to establish prices charged for gas to private consumers is held inoperative as to a gas company which had previously obtained consent to the use of streets for its gas pipes, when there is no legislative authority given to the city to fix such charges. *Re Pryor* (Kan.) 29 L. R. A. 398.

A city which has undertaken to furnish its inhabitants with water is held, in *Wood v. Auburn* (Me.) 29 L. R. A. 376, to have no right to shut off the supply of water from a consumer to coerce payment of an old claim for water after accepting rates and furnishing water to him for a subsequent period.

Counties.

The right of a county to turn over funds raised for county purposes to a city for expenditure on the city streets by the city authorities is sustained in *Duval County v. Jacksonville*

(Fla.) 29 L. R. A. 416, against the contention that this was the use of funds for other than county purposes.

Vaccination.

The existence of smallpox in a town, or an indication of an epidemic of that disease, is held in *Bissell v. Davidson*, 65 Conn. 183, 29 L. R. A. 251, not to be necessary to permit school committees, under the Connecticut statute, to require vaccination of pupils as a condition of attending public schools. A statute authorizing them to order such vaccination is treated as a police regulation which does not violate constitutional guaranties.

Nuisance.

The destruction of bedding which has been used by a person who had scarlet fever is held in *Savannah v. Mulligan* (Ga.) 29 L. R. A. 303, to be within the power of municipal authorities, without any right of the owner of the property to compensation, as it is merely the abatement of a nuisance.

Interstate Commerce.

A license tax on the right to operate a branch railroad in a city is held invalid in *San Bernardino v. Southern Pac. Co.* (Cal.) 29 L. R. A. 327, when this branch is part of an interstate line of railroad.

Taxing the franchise of a bridge company which maintains a toll bridge between states is held in *Com. v. Henderson Bridge Co.* (Ky.) 29 L. R. A. 72, not to constitute a taxation of interstate business.

Railroads.

The right of a railroad company to discontinue the operation of a ferry which it has operated as part of its line under a franchise is denied in *Brownell v. Old Colony R. Co.* (Mass.) 29 L. R. A. 169, and the power of the court to order the specific performance of the duty to operate the franchise is sustained, although the ferry has become unprofitable.

An order to restore and operate a passenger train, made by railroad commissioners, is held in *State, Kellogg, v. Missouri Pac. R. Co.* (Kan.) 29 L. R. A. 444, unenforceable by mandamus from the courts, on the ground that the order is not final or conclusive.

The sale of railroad property which is necessary for the franchise, in order to satisfy a judgment, is held in *Stewart v. Wheeling & L. E. R. Co.* (Ohio) 29 L. R. A. 438, to be allowable only in a proceeding in equity to which all persons in interest are made parties, and that the sale cannot be made on execution unless the statute provides for it.

Likewise, in *Central Trust Co. v. Moran*, 56 Minn. 188, 29 L. R. A. 212, it is held that the remedy of creditors against a railroad, its rolling stock and appertaining personal property, must be against it as an entirety, and not against its several parts.

Street Railroads.

A street-railroad corporation, although its line is operated by cable, is held in *Funk v. St. Paul City R. Co.* (Minn.) 29 L. R. A. 208, not to be within the provisions of a statute as to the liability of a railroad company to a servant for negligence of any other agent or servant.

Assessments for Improvements.

The sale of a freight house or a portion of the right of way and tracks of a railroad, although at its terminus, for an assessment on the property for local improvements, is held in *Lake Shore & M. S. R. Co. v. Grand Rapids*, 102 Mich. 374, 29 L. R. A. 195, to be unlawful, although an exemption of the road from taxation was held not to apply to such assessments. The court regarded it as doubtful if there was any mode of collecting the assessment. He said further legislation might be needed.

A contract by a city to give to a person for paving streets the assessments for benefits, to be accepted by him as payment, is held, in *Barber Asphalt Pav. Co. v. Harrisburg* (C. C. App. 3d C.) 29 L. R. A. 401, to leave the city liable to him when the assessments proved invalid because the city had no power to make them.

The right to make a trolley road across a steam railroad track at grade is sustained in *New York, N. H. & H. R. Co. v. Bridgeport Traction Co.* (Conn.) 29 L. R. A. 367, under a special statute permitting a grade crossing, and compensation to the railroad company is held not to be a necessary condition of the crossing.

Taxes.

Land covered by the water of a dam used to furnish power in another town is held, in *Amoskeng Mfg. Co. v. Concord*, 66 N. H. 562, 29 L. R. A. 57, to be assessable for taxation in the town where the dam lies, at the enhanced value on account of its capacity to furnish power outside the town.

The taxation of a bridge used exclusively for railroad purposes and leased forever to a railroad company is held, in *Chicago & A. R. Co. v. Windmiller* (Ill.) 29 L. R. A. 69, to be properly made by local assessors, and not by a state board of equalization as part of the railroad property.

The right of a state to tax the franchise of a bridge company created by it is held, in *Com. v. Henderson Bridge Co.* (Ky.) 29 L. R. A. 72, not to be defeated by the fact that the company had obtained from another state the privilege of extending its bridge from the state boundary at low-water mark to highlands, and had acquired from Congress the privilege of maintaining a bridge across a navigable river and its designation as a post road.

A lien on personal property for taxes on real estate created by statute is held, in *Bibbins v. Clark* (Iowa) 29 L. R. A. 278, to have no priority over mortgage liens previously existing.

A tax on sums invested in a state by a foreign corporation is held, in *People, Hecker-Jones Jewell Milling Co. v. Barker*, 147 N. Y. 31, 29 L. R. A. 393, to include only the value of the part paid for.

Poll Taxes.

A constitutional provision against levying taxes "by the poll" is, in *Short v. State*, 80 Md. 392, 29 L. R. A. 404, regarded as inapplicable to highway labor required of able-bodied male residents between twenty and fifty years of age, with the privilege of furnishing a substitute or commuting therefor in money.

States.

The right of a state or municipality, if any exists, to priority or preference of payment from an insolvent estate, is held in *State v. Foster* (Wyo.) 29 L. R. A. 226, to be cut off by a general assignment for creditors which passes the title, and public moneys deposited generally in a bank which becomes insolvent are held not to constitute a trust against

the assets, except so far as they can be traced into some specific fund or property.

A lake about a quarter of a mile from the main channel of the Mississippi river, forming no part of it for navigation, is held, in *State v. Haug* (Iowa) 29 L. R. A. 390, to be within the provisions of the Iowa statutes against the use of seines in the waters of that state, and not to be within the exception of boundary waters over which the state has no jurisdiction.

Hotels.

For the theft, by a night clerk in a hotel, from the hotel safe, of money deposited by a regular boarder, it is held in *Taylor v. Downey* (Mich.) 29 L. R. A. 92, that the hotel keeper is not liable, if ordinary care and diligence were exercised in employing the clerk.

Carriers.

A mistake in the date of a ticket by dating it on a day already past is held, in *Ellsworth v. Chicago, B. & Q. R. Co.* (Iowa) 29 L. R. A. 173, to be insufficient to defeat the use of the ticket on the day of sale, although it is marked good for use within one day of "date of sale," and failure to pay for the ticket when purchased because of haste to catch the train, with the acceptance of the passenger's promise to pay on his return, does not prevent his rights from being regarded as a passenger who can recover damages for wrongful ejection because of the misdating of the ticket.

The relation of carrier and passenger is held, in *Donovan v. Hartford Street R. Co.*, 65 Conn. 201, 29 L. R. A. 297, not to exist when a person, after hailing a street car, is struck by a lurch of the car suddenly turning on a side track while he is waiting to take passage.

Corporations.

Fraud of promoters in procuring a subscription of stock to a corporation before its organization is held not to be a defense against an assessment on stock by the corporation, in *St. John's Mfg. Co. v. Munger* (Mich.) 29 L. R. A. 63, where the subscriber had carried out his contract by uniting in the formation of the corporation. His remedy is held to be restricted to an action against the wrongdoer.

A promoter who has not paid his stock subscription is, in *Hooper v. Central Trust Co.*

(Md.) 29 L. R. A. 262, denied the right to take an assignment of a claim against the corporate property for improvements and enforce it in priority to valid mortgages, or to enforce a mortgage which the promoters have obtained against another mortgage the lien of which has been waived in reliance on a fraudulent guaranty of the promoters.

Officers of a corporation, who have voted and paid themselves salaries partly and largely for the purpose of depriving stockholders of the funds of a litigation in case of their success, although the sums were paid nominally and partly for services rendered to the company, were held in *Eaton v. Robinson* (R. I.) 29 L. R. A. 100, to be compelled to account for all the sums withdrawn, with interest thereon.

The members who have attempted to form a corporation without success are held to have the privileges, as well as the liabilities, of partners, in *Jones v. Aspen Hardware Co.* (Colo.) 29 L. R. A. 143.

An incorporated state university is held in *State, Little, v. Board of Regents* (Kan.) 29 L. R. A. 378, to be such a corporation as is subject to the control of the court by quo warranto, and the unwarranted demand by the institution for fees from students for the use of a library is prohibited in such a proceeding.

Bonds.

Corporate bonds secured by mortgage and payable to bearer are held in *American Nat. Bank v. American Wood Paper Co.* (R. I.) 29 L. R. A. 103, to be so far negotiable, at least, that the holder may maintain an action thereon in his own name, although the statute as to negotiable paper applies in terms only to promissory notes.

Bills and Notes.

After an indorser has been released by lack of notice, a consideration is held necessary to bind him by a subsequent promise to pay, in the Kentucky case of *Sebree Deposit Bank v. Moreland*, 29 L. R. A. 305, although the authorities generally sustained such new promises irrespective of any consideration.

The assignment of forged notes with a genuine mortgage securing notes is held, in *Kernohan v. Manss* (Ohio) 29 L. R. A. 317, not to give the assignee a right to the security as against a subsequent assignee who took a genuine note which the mortgage was given to

secure before its maturity, although the assignee of the latter did not see the original mortgage, but relied on its security.

Building and Loan Associations.

Forfeiture of stock in a building and loan association for default of payments is held, in *Southern B. & L. Assn. v. Anniston L. & T. Co.* 101 Ala. 582, 29 L. R. A. 120, to be beyond the power of equity to relieve against, and the application of payments made on stock to a mortgage given by the owner for a loan is not permitted.

But the application of such payments on stock to a mortgage is permitted in *Buist v. Bryan* (S. C.) 29 L. R. A. 127, in determining whether the mortgage has been paid, when the association is in the hands of a receiver.

Likewise, in *Randall v. National B. L. & P. Union*, 42 Neb. 809, 29 L. R. A. 133, payments upon stock in a building and loan association, although it has been declared forfeited, were allowed in an accounting on an amount due on a mortgage given by the same member, and treated as payments *pro tanto* on the loan.

The liability to an assessment on stock in a building and loan association for the purpose of covering losses and equalizing the members so that they may all go out at the close on an equal footing is held, in *Wohlford v. Citizens B. L. & Sav. Assn.* (Ind.) 29 L. R. A. 177, to be included in the obligation of a note and mortgage providing for assessments and fees as well as dues.

So a stipulation for the payment of assessments upon a member in such an association is held, in *Eversmann v. Schmitt* (Ohio) 29 L. R. A. 184, sufficient to cover an assessment to meet a shortage in the assets of an insolvent association in the hands of a receiver, and the cancellation of a mortgage to the association was denied until such assessment was paid.

Master and Servant.

A railroad company which required a train crew to be on duty nineteen hours each day without time for food is held in *Pennsylvania Co. v. McCaffrey* (Ind.) 29 L. R. A. 104, to be liable for an injury to a track hand caused by an attempt of some of the crew to operate the train while others have temporarily left to obtain food.

Labor Unions.

A statute protecting labor unions in the use of labels or trade-marks is sustained in *State v. Bishop* (Mo.) 29 L. R. A. 200, but guilty knowledge is held necessary to sustain a conviction for the sale of goods having counterfeit labels. As to discharge of workmen for membership in labor union, see *supra*, Constitutional Law.

Descent and Distribution.

The right to inherit when the heir has murdered his ancestor to obtain the inheritance is sustained in the recent case of *Carpenter's Appeal*, 170 Pa. 203, 29 L. R. A. 145, partly on the ground that the Constitution prohibited attainders working corruption of blood and forfeiture of estate.

Explosion.

Liability for an explosion of natural gas is sustained in *Ohio Gas Fuel Co. v. Andrews*, 50 Ohio St. 695, 29 L. R. A. 337, even in the absence of negligence, under Ohio Rev. Stat., § 3561, imposing the duty of keeping natural gas under control during transportation.

An explosion of gas escaping from defective pipes laid on the surface of a highway is held, in *Lebanon Light, Heat, & P. Co. v. Leap* (Ind.) 29 L. R. A. 342, to create a liability on the part of the company transporting the gas through the pipes.

An explosion of gas in a building in which it escapes from a defective pipe is held to create a liability on the part of the gas company, in *McGahan v. Indianapolis Natural Gas Co.* (Ind.) 29 L. R. A. 355, only when the person injured is free from contributory negligence; and when an experienced plumber took a lighted lamp in search for a leak of gas, an explosion which resulted was charged to his negligence.

Bicycles.

Riding a bicycle on a sidewalk or footway being prohibited by statute in Pennsylvania, it is held in *Com. v. Forrest*, 29 L. R. A. 365, that the fact that the sidewalk ridden upon was on land appropriated by a turnpike company, which consented to such use, did not take the case out of the statute, and the further fact that other persons were in the habit of riding on the sidewalk was immaterial.

The Humorous Side.

A MEDICATED PLEASURE.—In the notes from Edinburgh in the *Scottish Law Review* the writer, in commenting on the "literary habit" of some of the sheriffs in the inferior courts, refers especially to "our delightful brother at Dundee" and his "happiest of epigrams," which was uttered in the case of a merry-go-round. It was as follows: "The pursuer in this case earns his livelihood by supplying amusement and emetics to young people by means of gondolas which float on dry land, and are propelled by steam."

DIES ILLA.—The *London Law Journal* says: "Mr. Justice Day's name is a fertile theme for jesting. *Punch*, of course, said, when the learned judge was raised to the bench, that he had been turned into Knight. Now, when Mr. S. H. Day appears in four successive election petitions, the wags of the court have been saying that petitions are being heard from Day to Day (*de die in diem*). It is an undeniable proposition 'that if a cause were tried before Day it would be tried in the dark,' but this is only 'falsely true.'" Presuming on human frailty, we may be permitted to suggest also that at the very moment when he grows dark with wrath one may look for a "break" of Day.

AN OPEN COURT.—A recent judicial opinion quotes from counsel that a justice's court is wherever you find the justice, and that "attorneys, like other human beings, are not above the customs of a country, and it is at least awkward, if not downright impoliteness, to stop the deal in a game of frog, and distract the attention of the 'swampers' from the contents of the 'widow,' by injecting into the proceedings, 'If your honor please, as attorney representing the defendant in Doe v. Roe, I respectfully move, etc.'" How much better to respect the rights of all, and when the court is sipping the fruits of a well earned victory (his own or some one else's) quietly hand him the paper, with a statement of the contents, and a request that it be filed; and if the 'victories' have not been so frequent but that he knows what he is asked for, and proceeds thereafter to act upon the request, it would seem that as much had been accomplished as could have been by the most formal *viva voce* motion." The court then says:

"Although not able to determine from the language of the learned counsel what his honor was then doing, I understand the statement as

an admission that he was not then engaged in judicial work, and was possibly not in a condition to do so."

ARRESTED THE CALF.—A correspondent sends us the following copy of a warrant of arrest obtained from a justice of the peace by one who had pastured a calf for the owner of the animal, when the latter had taken away the calf without paying the bill for its keeping, which he contested as exorbitant:

"State of Minnesota)
County of Blue Earth) The State of Minnesota;
To the Sheriff or any Constable of said County:
"You are hereby commanded to summon L. A. Dudley, if he shall be found in your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the twenty eight day of October, A. D. 1895, or before, or as soon as possible, at four o'clock in the afternoon, on said day at my office in the village of Garden City, in said county, to answer to E. F. Apley. Also to bring a certain black and white heifer calf, about eight months old, which said Dudley feloniously took from my premises this day in a criminal action, and have you then and there this writ, October 28th, 1895.

"Given under my hand and 28th day of October, 1895.

"Justice of the Peace."

Armed with this writ, it is said, the constable pursued the man to his home 15 miles away, arrested him at eleven o'clock at night, and took both him and the calf back the same night, arriving at their destination early in the morning. Yet after all this trouble, no prosecution followed on the writ.

WOULD BEE FOUND IN THE ONION PATCH.—Another correspondent sends the following full and true copy of a justice's docket in Hardin County, Ohio:

"Before _____ J. P. in and for said county. Complaint made this 3 Day of July A D 1893 by _____ upon oath filed with Bill of Particklers chargin gorge Ragland For Tresspassen on his Premiss, the said _____ swore a warrant for the said George Ragland and was delivered at my office July 3 at 2 o'clock p m by _____ constable. The said defendant Stud Triel I find him guilty of Tresspassing Dismiss him hell my Decision untill July 4 95 at 7 o'clock P M _____ J P

"I decided for Plaintiff tuk the amount of ground that Nelson Nash Decribe under oath and said that he Prepared for the said Plaintiff in the case and the said plaintiff gives to the said Deffent the said amount agreed a Pun When contract was maid and also the said deffent to Keep off said Prems untill the crop comes to maturity and all the said Plaintiff to pay the costs that acrud on the Pairt of the Plaintiff also the deffent to pay the cost on the Pairt of the Deffent.

"When I gave my decison the said George Ragland in Present said that he would bee Found in the onion Patch that they was contending for if we wanted to see him.

"The Plaintiff Proves a contract whiles the deffent Did not Prove any."

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